

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 3
Mtg. Date February 17, 2015
Dept. City Manager's Office

Item Title: Real Estate Purchase and Sale Agreement – APN 480-043-38

Staff Contact: Graham Mitchell, City Manager

Recommendation:

Adopt a resolution (**Attachment B**) approving the Real Estate Purchase and Sale Agreement for APN 480-043-38 between the City of Lemon Grove and Mike Burnett.

Item Summary:

On September 17, 2013, the City Council considered a request to purchase a 2,410 square foot City-owned parcel from Mike Burnett. The parcel is located south of Citronica One and west of the Main Street Promenade. At the meeting, the City Council directed staff to negotiate terms of an agreement based on the offer made by Mr. Burnett. The purpose of this agenda item is to consider a resolution approving a Real Estate Purchase and Sale Agreement. The staff report (**Attachment A**) provides a summary of the proposed transaction.

Fiscal Impact:

The sale of the parcel results in a net payment of \$25,000, less escrow fees.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section <u> </u> | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. Resolution (including a Real Estate Purchase and Sale Agreement)

Attachment A

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 3

Mtg. Date February 17, 2015

Item Title: Real Estate Purchase and Sale Agreement – APN 480-043-38

Staff Contact: Graham Mitchell, City Manager

Discussion:

On August 26, 2013, Mike Burnett provided the City with a Letter of Intent to purchase a 2,410 square foot City-owned parcel that was remaining from the development of the Main Street Promenade. The parcel is located south of Citronica One and west of the Main Street Promenade. Mr. Burnett intends to develop a mixed-use project on the site.

On September 17, 2013, the City Council considered the offer to purchase the parcel. During its discussion, the City Council directed staff to prepare a purchase agreement based on the terms identified in the Letter of Intent. Staff and Mr. Burnett opted to wait until the discretionary permit was issued to CityMark before finalizing a purchase agreement. Since approving CityMark's planned development permit on January 6, 2015, staff has prepared a Real Estate Purchase and Sale Agreement (included in **Attachment B**) for City Council consideration. The following paragraph highlights the significant terms and conditions of the agreement.

The agreement indicates that the parcel will be sold for \$25,000. The price per square foot equals \$10.37. This figure is lower than the amount received for the CityMark parcel. However, the small size of the parcel reduces the property's per square foot value. The agreement indicates that escrow will close after the buyer completes due diligence on the site over a maximum of 60 days. The agreement indicates that the City will pay for half of escrow fees and for a title policy. The buyer is responsible for half of escrow fees and standard ALTA (American Land Title Association) policy. The agreement also indicates that the buyer indemnifies, holds harmless and defends the City against claims arising out of the transaction.

Conclusion:

Staff has prepared a resolution (**Attachment B**) approving the Real Estate Purchase and Sale Agreement between the City and Mr. Burnett for City Council consideration.

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RESOLUTION NO. 2015-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA APPROVING A REAL ESTATE PURCHASE AND SALE AGREEMENT WITH MIKE BURNETT

WHEREAS, the overall vision of the City in the downtown, as stated in the Downtown Village Specific Plan, is to “. . . create a vibrant and sustainable downtown [and] a mix of land uses ensuring a variety of residential options, shopping in a village atmosphere, and employment opportunities . . .”; and

WHEREAS, the City has initiated, supported and fostered public and private investments in the downtown through the private development of 137 affordable housing units, rehabilitation of commercial properties, and the development of the Main Street Promenade; and

WHEREAS, the purpose of the public investments in the downtown area is to encourage additional private development; and

WHEREAS, the City acquired six parcels between 3466 and 3524 Main Street to facilitate the development of the Main Street Promenade and the Citronica One mixed-use project; and

WHEREAS, after the construction of the Main Street Promenade, approximately 2,410 square feet of land remains vacant south of Citronica One; and

WHEREAS, on September 17, 2013, the City Council accepted a Letter of Intent received from Mike Burnett to purchase the subject parcel; and

WHEREAS, the Letter of Intent, accepted by the City, details the terms of a Real Estate Purchase and Sale Agreement; and

WHEREAS, Mike Burnett and the City wish now to execute a Real Estate Purchase and Sale Agreement. |

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby:

1. Approves a Real Estate Purchase and Sale Agreement (Exhibit 1) with Mike Burnett, or Assignee; and
2. Authorizes the City Manager to sign said Real Estate Purchase and Sale Agreement; and
3. Authorizes the City Manager to execute any related documents or make purchases required to close escrow on the City-owned parcels. |

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Attachment B

EXHIBIT A

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is made and entered into as of the ____ day of _____, 2015 (the "Effective Date") by and between the CITY OF LEMON GROVE, a public body (hereinafter "City"), and Mike Burnett, or assignee (hereinafter "Buyer"). City and Buyer are sometimes collectively referred to herein as the "Parties" or individually as a "Party."

RECITALS AND BACKGROUND

WHEREAS, City owns certain vacant property west of the Main Street Promenade and directly south of the Citronica One development in the City of Lemon Grove, California, (as more particularly defined below, the "Property"); and

WHEREAS, Buyer is interested in purchasing the Property is for the purpose of developing a mixed-use project, and City is willing to sell the Property to Buyer for such purpose, on the terms and conditions contained herein.

NOW, THEREFORE, the Parties hereby agree as follows:

Definitions

As used herein, the following terms shall have the meanings respectively indicated:

"City Deed" means the grant deed from City to Buyer conveying title.

"Closing" means the transfer of title to the Property by City to Buyer in accordance with Section 2 below.

"Closing Date" has the meaning specified in Section 1.6 below.

"Covered Parties" means City and its past, present and future directors, officers, employees, representatives and agents.

"Escrow Holder" means Lawyers Title.

"Hazardous Material" means any substance or material which is defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "acutely hazardous wastes," "restricted hazardous waste," "toxic substances," or "known to cause cancer or reproductive toxicity" (or words of similar import), petroleum products (including crude oil or any fraction thereof) or any other chemical, substance or material which is prohibited, limited or regulated under any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law, or treaty now or hereafter in force regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment or natural resources.

"Property" means that certain real property described as APN 480-043-38, Lemon Grove, CA which is approximately 2,410 square feet and as legally described in Exhibit A attached hereto.

"Purchase Price" means the payment to be paid by Buyer to City for the Property as described in Section 1.2 below.

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"Title Company" means Lawyer's Title.

Section 1. Agreement of Purchase and Sale

1.1 Sale of the Property. In consideration of and subject to the terms and conditions contained herein, City hereby agrees to sell the Property to Buyer and Buyer hereby agrees to purchase the Property from City.

1.2 Purchase Price. The Purchase Price to be paid by Buyer to City for the Property is the sum of Twenty-Five Thousand Dollars (\$25,000.00), payable at the Closing.

1.3 Deposit. Three (3) business days following the mutual execution of this Agreement and delivery of this Agreement to Escrow Holder opening escrow for Buyer's purchase of the Property ("Escrow") Buyer shall deliver to Escrow Holder the sum of Five Thousand Dollars (\$5,000.00) (the "Deposit"). The Deposit is deemed applicable to the Purchase Price. In the event that both the Agreement and the Deposit are not timely delivered to Escrow Holder, (a) Escrow shall be deemed automatically cancelled, (b) Escrow Holder shall, without requiring any further instructions, return to each party any documents or other items deposited by such party, and (c) neither party shall have any further rights or obligations pursuant to this Agreement or the Escrow. Escrow Holder shall be entitled to its normal and reasonable costs and cancellation charges in the event of such cancellation.

1.4 Title. Within ten (10) days of the Opening Date, City shall cause Title Company to issue the preliminary title report ("PTR") regarding the Property and any referenced underlying title documents. Subsequent to execution of this Agreement, City shall not record any further liens and encumbrances against the Property.

1.5 Conditions of Purchase. This Agreement, and the Close of Escrow, are conditioned upon all of the following:

(a) Buyer's written approval or disapproval of the PTR referred to in Section 1.4 and all documents referred to therein on or before the Feasibility Expiration Date (defined below) after the receipt thereof, and Buyer's written approval of any subsequent amendments, additions or changes to the PTR within five (5) business days from the receipt thereof. Any exceptions to title shown on the PTR or any amendment or change to the PTR not objected to in writing by Buyer within the foregoing time periods shall be deemed to be approved by Buyer. In the event Buyer disapproves any title exceptions, City shall have ten (10) business days to cure any disapproved lien or encumbrance. In the event City elects not to cure any disapproved lien or encumbrance, Buyer shall have five (5) business days after receiving notice thereof to either approve such previously disapproved exception or terminate this Agreement and the escrow created by it. In the event Buyer does not deliver written notice of either approval or disapproval of the PTR or any exceptions not cured by City within the time provided in this Section, Buyer shall be deemed to have disapproved the exceptions.

(b) Buyer shall have a due diligence feasibility study period of sixty (60) days from the Opening Date (the "Feasibility Expiration Date") during which to obtain (at Buyer's option and expense), review and approve in writing the physical condition of the Property, including a soils report; the availability and location of utilities (water, sewer, gas, electric and cable television) in sufficient size to service Buyer's proposed development of the Property; any and all governmental fees, permits and restrictions relative to the construction of Buyer's proposed development on the Property; an economic analysis for developing Buyer's proposed project on the Property; and an ALTA survey of the Property (at Buyer's option and expense). The approval, conditional approval or disapproval of any or all of the items listed in this Section 1.5(b) shall be at the sole discretion of Buyer. Should Buyer not approve in writing the contingency items listed in this Section 1.5(b) on or before the Feasibility Expiration Date, Escrow shall be deemed automatically terminated, and

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Escrow Holder shall return the Deposit to Buyer; provided however that Escrow Holder shall pay to Seller from the Deposit \$100 and may retain such funds and documents usually retained by escrow holders in accordance with standard escrow termination procedures. If Buyer disapproves of any of the contingency items set forth in this Section 1.5(b), Buyer shall deliver written notice of such disapproval to City and Escrow Holder on or before the Feasibility Expiration Date. In the event Buyer does not deliver written notice to City and Escrow Holder disapproving any of the items set forth in this Section 1.5(b) on or before the Feasibility Expiration Date, Buyer shall be deemed to have approved of the items set forth in this Section 1.5(b) and not to have waived any right to terminate this Agreement for the matters set forth in this Section 1.5(b).

(c) Except in the event of breach of this Agreement by the City, the Deposit shall be deemed nonrefundable upon (i) Buyer's approval under 1.5(a) and 1.5(b) and (ii) City's approval of building permits for Buyer's project on the Property.

(d) Without making any representation regarding the accuracy of the materials provided herein, within ten (10) days of mutual execution of this Agreement, City shall make available to Buyer for inspection and copying all materials in City's possession, including but not limited to: (a) any existing surveys of the Property; (b) any and all soils and environmental reports, reports pertaining to Hazardous Materials, government permits, licenses approvals and significant correspondence, (c) any and all leases and easements, regardless of purpose or use, associated with the Property or any development approvals thereto; and (d) any studies or other reports or information in the possession of or available to City which pertain to the Property;

(e) Subject to Buyer providing City two (2) days' prior written notice, City hereby agrees that Buyer and/or Buyer's agents, representatives, contractors and subcontractors may enter upon the Property during normal business hours or at such other times as are mutually acceptable to City prior to the Close of Escrow in order to conduct reasonable engineering studies, environmental tests and studies, soil and compaction tests and other tests and studies. After conducting its studies, Buyer will restore the Property to its original condition prior to its entry on the Property. Buyer shall defend and hold the Covered Parties harmless, and be responsible, for any liability, costs, claims, damages or injuries (collectively, "Claims") caused by such entry and shall keep the Property free of any and all liens arising therefrom, except for any Claims arising from the gross negligence or willful misconduct or omission of City for which City shall be liable and responsible. Prior to any such entry on to the Property, Buyer will obtain and maintain, at Buyer's expense, a commercial general liability insurance policy with a combined limit of not less than \$1,000,000. Such policy will name City as an additional insured. Buyer will deliver to City a certificate of insurance or other reasonable proof evidencing such insurance. Buyer will ensure that Buyer's contractors or subcontractors also shall comply with the aforementioned insurance requirements, including naming City as an additional insured. The provisions of this Section 1.5(e) shall survive the Close of Escrow and the termination of this Agreement, as applicable.

1.6 Closing Date. The Closing Date shall occur no later than 90 days of Buyer's delivery of written approval of title and other due diligence matters as set forth in section 1.5(a) and 1.5(b).

1.7 Prorations. Normal prorations of taxes and related items shall be made at Closing. If the Closing shall occur before the tax rate is fixed for the then current year, the proration of taxes shall be based upon taxes for the prior year and adjusted for the year of Closing within a reasonable time after they become finally determined for such year.

1.8 Costs. At Closing, City shall pay: (a) the prorated amounts of real estate taxes and other transfer taxes including any assessments that are due up to the date of Closing; (b) one half escrow fees (and taxes thereon); and (c) an amount equal to the standard premium

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charged by the Title Company for the title policy with a face amount of insurance equal to the Purchase Price. At Closing, Buyer shall pay: (a) those amounts of real estate taxes and other transfer taxes including any assessments to be prorated through Closing; (b) one half escrow fees (and taxes thereon); and (c) an amount equal to the standard ALTA premium charged by the Title Company for the title policy with a face amount of insurance equal to the Purchase Price.

1.9 Possession. Possession of the Property free and clear of all tenancies and monetary liens shall be delivered to Buyer by City at Closing.

1.10 Buyer's Deliveries. Prior to Closing, Buyer shall deliver or cause to be delivered to City through Escrow:

- (a) The Purchase Price less the applicable Deposit, as set forth in Paragraph 1.3;
- (b) In Cash, the charges to Buyer regarding any closing costs and prorations payable by Buyer including the cost of an ALTA owner's extended policy in excess of the standard cost of a CLTA owner's policy.

1.11 City's Deliveries. Prior to Closing, City shall deliver or cause to be delivered to Buyer through Escrow:

- (a) An ALTA owner's extended policy of title insurance, in the amount reasonably determined by Buyer, insuring the Property and any improvements, the cost of such policy to be paid by City to the extent of the cost of a CLTA owner's policy; and
- (b) Deposit a Grant Deed with Escrow Holder conveying fee title to the Property free and clear of all encumbrances, except those encumbrances accepted by the Buyer under section 1.5(a).

1.12 Additional Documents. Both parties shall execute and deliver through escrow any other documents or instruments that are reasonably necessary in order to consummate the Closing.

Section 2. Other Provisions

2.1 Liquidated Damages. **THE PARTIES AGREE THAT THE TOTAL PURCHASE PRICE HAS BEEN DETERMINED NOT ONLY BY A CONSIDERATION OF THE VALUE OF THE PROPERTY PER SE, BUT ALSO BY A CONSIDERATION OF THE VALUE OF THE VARIOUS COVENANTS, CONDITIONS, AND WARRANTIES OF THIS AGREEMENT AS THEY RELATE TO THE PROPERTY. THE PARTIES HAVE DISCUSSED AND NEGOTIATED IN GOOD FAITH UPON THE QUESTION OF THE DAMAGES TO BE SUFFERED BY CITY IN THE EVENT BUYER BREACHES THIS AGREEMENT, AND HAVE ENDEAVORED TO REASONABLY ESTIMATE SUCH DAMAGES, AND THEY HEREBY AGREE THAT, BY REASON OF THE AFORESAID CONSIDERATIONS (I) SUCH DAMAGES ARE AND WILL BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX; (II) LIQUIDATED DAMAGES IN THE AMOUNT OF BUYER'S ACTUAL DEPOSITS IN ESCROW THROUGH THE DATE OF SUCH BREACH ARE AND WILL BE REASONABLE; (III) IN THE EVENT OF SUCH BREACH, CITY SHALL BE ENTITLED TO RETAIN THE SAID AMOUNT AS SAID LIQUIDATED DAMAGES AND NOT AS A PENALTY; AND (IV) IN CONSIDERATION OF THE PAYMENT OF SAID LIQUIDATED DAMAGES, CITY SHALL HAVE DEEMED TO HAVE WAIVED ALL OTHER CLAIMS FOR DAMAGES OR RELIEF AT LAW OR IN EQUITY (INCLUDING ANY RIGHTS CITY MAY HAVE PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 3389 AND 1680).**

BUYER'S INITIALS: _____

CITY'S INITIALS: _____

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2.2 Representations of Buyer. Buyer represents and warrants, as of the date this Agreement is fully executed and as of the Closing Date, that Buyer has taken all action required by law, and all required action under its governing documents necessary to authorize Buyer to enter into this Agreement and to carry out its obligations hereunder.

2.3 No Representations as to the Property and Release by Buyer. Buyer acknowledges that, as of the Feasibility Expiration Date, Buyer has conducted such investigations and inspections of the Property as it desires. Buyer hereby affirms that City, its agents, employees and/or attorneys have not made, nor has Buyer relied upon any representation, warranty or promise with respect to the Property or any other subject matter of this Agreement except as expressly set forth in this Agreement, including, without limitation, any warranties or representations, express or implied, as to the general plan designation, zoning, value, use, tax status or physical condition of the Property, or improvements thereon, or any part thereof, including, but not limited to, the flood elevations, drainage patterns and soils and subsoils composition and compaction level, and other conditions at the Property, or the existence or non-existence of Hazardous Material on or under the Property or adjacent property, or as to the accuracy of any boundary survey or other survey or any soils reports or other plans or reports therefor. Without limiting the generality of the foregoing, and except for the warranties and covenants set forth in the City Deed Buyer is purchasing the Property from City in an "AS IS," "WHERE IS" CONDITION, SUBJECT TO "ALL FAULTS," INCLUDING, BUT NOT LIMITED TO, BOTH LATENT AND PATENT DEFECTS. EXCEPT AS OTHERWISE PROVIDED IN THE CITY DEED, BUYER HEREBY RELEASES THE COVERED PARTIES OF ALL CLAIMS AND WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE TITLE, CONDITION AND USE OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

2.4 Buyer's Indemnity Through Closing. Buyer hereby indemnifies, holds harmless and agrees to defend the Covered Parties from and against all Claims (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property occurring during the period defined below at the Property and/or incurred as a result of or arising out of:

events occurring during the period from the date of this Agreement to the Closing ("Occurrence Period"): (i) as provided under Sections 1.5(e) of this Agreement; (ii) the active or passive negligence or willful misconduct of Buyer, and its agents, servants and employees, (iii) the breach of any of Buyer's obligations hereunder, and (iv) any necessary or appropriate investigation, repair, cleanup, remediation or detoxification of the Property and other affected property and the preparation of any corrective action, closure or other required plans or reports, to the full extent that such actions are attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of Hazardous Material by Buyer or its agents during the Occurrence Period and relate to or involve the Property.

The indemnity obligation shall survive the Closing and/or termination of this Agreement.

Scope of Release and 1542 Waiver. The release set forth in Section 2.3, includes claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist which, if known by Buyer, would materially affect Buyer's release to City. Buyer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME

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OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

In this connection and to the extent permitted by law, Buyer hereby agrees, represents and warrants, which representation and warranty shall survive the Closing, that Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown and unsuspected, and Buyer further agrees, represents and warrants, which representation and warranty shall survive the Closing, that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included as a material portion of the consideration given to City by Buyer in exchange for City's performance hereunder. The foregoing release shall not apply to any of the matters expressly contained in this Agreement.

City has given Buyer material concessions regarding this transaction in exchange for Buyer agreeing to the provisions of this Section. City and Buyer have each initialed this Section to further indicate their awareness and acceptance of each and every provision hereof.

CITY'S INITIALS: _____

BUYER'S INITIALS: _____

Section 3. General Provisions

3.1 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be given by (a) Federal Express (or other established express delivery service which maintains delivery records), (b) hand delivery, or (c) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or such other addresses as the Parties may designate from time to time by written notice in the above manner:

To City: CITY OF LEMON GROVE
3232 Main Street
Lemon Grove, CA 91945
Attn: City Manager

To Buyer: Mike Burnett
830 25th Street, Studio 200
San Diego, CA 92102

Such communications may also be given by electronic mail, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon the receipt, or upon attempted delivery thereof if the delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means of accomplishing delivery. Upon at least ten (10) days prior written notice, each Party shall have the right to change its address to any other address within the United States of America.

3.2 References. All references to "Article," "Articles," "Section," or "Sections" contained herein are, unless specifically indicated otherwise, references to Articles and Sections of this Agreement.

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3.3 Exhibits. All references to “Exhibits” contained herein are references to exhibits attached hereto, all of which are made a part hereof for all purposes.

3.4 Captions. The captions, headings and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

3.5 Number and Gender of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

3.6 Attorney's Fees. In the event a Party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party to be fixed by the court in the same action. The term “legal proceedings” as used above shall be deemed to include appeals from a lower court judgment and it shall include proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters.

3.7 Governing Law. This Agreement is intended to be performed in the State of California, and the laws of such State shall govern the validity, construction, enforcement and interpretation of this Agreement, unless otherwise specified herein.

3.8 Amendments. This Agreement may be amended or supplemented only by an instrument in writing, executed by both City and Buyer.

3.9 Invalid Provisions. Except as otherwise provided in the next sentence, if any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, but the parties shall equitably resolve and negotiate the effect of such deletion. In the event that either the provision relating to City's obligation to convey the Property or Buyer's obligation to pay the Purchase Price is held to be illegal, invalid or unenforceable under present or future laws, this Agreement shall be null and void.

3.10 Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed and delivered by City and Buyer, City and Buyer agree to perform, execute and deliver or cause to be performed, executed, and delivered at the Closing or after the Closing any and all such further acts, deeds and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

3.11 Survival. All indemnities, covenants, representations and warranties contained herein shall survive the termination of this Agreement, Closing, the delivery of the City Deed, and the acquisition of the Property by Buyer.

3.12 Conflict of Interests. No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating, to the Agreement which is prohibited by law.

3.13 Warranty Against Payment of Consideration for Agreement. Buyer represents and warrants that neither it nor any of its members, managers, employees or officers has: (1) provided an illegal gift to City officer or employee or former City or City officer or employee,

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or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in City's conflict of interest ordinance; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in City's conflict of interest ordinance.

3.14 No Liability of City Officials and Employees. No member, official or employee of City shall be personally liable to Buyer, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Buyer or successor or on any obligation under the terms of this Agreement.

3.15 Exchange. Both Buyer and City agree to cooperate with each other in the event that either or both wish to participate in a 1031 exchange. Any party initiating an exchange shall bear the cost of such exchange

IN WITNESS WHEREOF, the Parties have caused this Purchase and Sale Agreement to be duly executed as of the date first written.

CITY:

By _____
Graham Mitchell, City Manager

Approved as to legal form:

By _____
James P. Lough, City Attorney

BUYER:

MIKE BURNETT, OR ASSIGNEE

By _____
Mike Burnett